

Accordingly, the expectation is that the 218-219 MHz Service could soon provide sources of competition for other wireless services. However, competition is developing slowly, due in part to (1) the limited permissible use of the service before its restructuring; (2) the fact that many 218-219 MHz Service markets are not currently licensed due to payment defaults; and (3) the ongoing implementation of the service restructuring.

Advantages

The Part 95, subpart F rules provide licensees with the flexibility to identify and implement services in response to market demand. For example, the technical rules have general interference protection requirements, and there is a substantial service requirement.

Disadvantages

The rules impose limited administrative and technical burdens that are inherent to the licensing process and necessary for compliance with technical and operational rules.

Recent Efforts

None.

Comments

No comments were filed with respect to this subpart.

Recommendation

The Part 95, subpart F rules concern licensing, technical, and operational rules, such as technical and operational standards and interference-related issues among 218-219 MHz service licensees as well as licensees in adjacent services. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that these Part 95 rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.”

PART 101 – FIXED MICROWAVE SERVICES

Description

Part 101 contains licensing, technical, and operational rules for the microwave services. Fixed microwave spectrum is primarily used to deliver video, audio, data, and control functions for other specific communications services from one point and/or hub to other points and/or subscribers for distribution.³⁰³ Most Part 101 application processing rules, technical standards, and operational requirements apply to all Part 101 services, but others apply only to specific services,³⁰⁴ or to common carrier services but not private services (or vice versa).³⁰⁵

Part 101 was created in 1996 through consolidation of the rules for the common carrier and private operational fixed (POFS) microwave services contained in Parts 21 and 94.³⁰⁶

Part 101 contains 17 lettered subparts:

- A – General
- B – Applications and Licenses
- C – Technical Standards
- D – Operational Requirements
- E – Miscellaneous Common Carrier Provisions
- F – Developmental Authorizations
- G – 24 GHz Service and Digital Electronic Message Service
- H – Private Operational Fixed Point-to-Point Microwave Service
- I – Common Carrier Fixed Point-to-Point Microwave Service
- J – Local Television Transmission Service
- K – [Reserved]
- L – Local Multipoint Distribution Service
- M – Competitive Bidding Procedures for LMDS
- N – Competitive Bidding Procedures for the 38.6-40.0 GHz Band
- O – Multiple Address Systems
- P – Multichannel Video Distribution and Data Service Rules for the 12.2-12.7 GHz Band
- Q – Service and Technical Rules for the 70/80/90 GHz Bands

³⁰³ 47 C.F.R. Part 101.

³⁰⁴ See, e.g., 47 C.F.R. §§ 101.21(e), 101.61(c).

³⁰⁵ See, e.g., 47 C.F.R. §§ 101.13, 101.15.

³⁰⁶ Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order*, 11 FCC Rcd 13449 (1996).

Purpose

The Part 101 rules are intended to reduce or eliminate the differences in application processing between common carriers and private operational fixed microwave service licensees, and to further the regulatory parity among these microwave services.³⁰⁷

Analysis

Status of Competition

Because the Part 101 microwave services encompass a variety of private and common carrier applications, and because some services are licensed on a point-to-point basis while others are licensed geographically, the level of competition varies greatly among individual microwave services.

The largest commercial deployment of Part 101 microwave services has occurred in the 24 GHz, 28 GHz (LMDS), and 39 GHz bands. The licensees in these bands have the potential to create facilities-based competition in numerous industries, including high-speed broadband services. In other Part 101 services, licensees continue to rely on traditional point-to-point microwave systems to meet their operational support and critical infrastructure needs, as opposed to using microwave technologies to access customers directly. In the future, commercial deployment may occur at 12.2-12.7 GHz (MVDDS) and at 70/80/90 GHz because the Commission began licensing these new services in mid-2004.³⁰⁸

Advantages

The Part 101 rules provide for a unified regulatory approach for the microwave services, and eliminate the differences in processing applications between common carriers and POFS licensees that existed in the former rules. Because each of the microwave services shares at least some frequencies with other microwave services, and because some frequencies are shared with government users, the rules minimize repetition, reduce the potential for interference, and aid different microwave users in efficient use of the microwave spectrum.

Part 101 also contains competitive bidding rules (Subparts M and N) that, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules are structured to promote opportunity and competition. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

³⁰⁷ *Id.* at 13452-53.

³⁰⁸ See further discussion of MVDDS (subpart P) and 70/80/90 GHz (subpart Q), *infra*.

Disadvantages

The Part 101 rules impose limited administrative and technical burdens inherent to the licensing process and necessary for compliance with technical and operational rules.

Recent Efforts

In 2002, the Commission recently completed a comprehensive re-evaluation of the Part 101 rules.³⁰⁹ This proceeding sought to eliminate rules that were duplicative, outmoded, or otherwise unnecessary; it also sought comment on specific proposals to streamline the regulations to make sure that the regulations conform to the Communications Act of 1934, as amended.³¹⁰

In 2004, the Commission amended section 101.31(b)(1)(v) to permit Part 101 applicants to initiate conditional operation after they have obtained consent of the Quiet Zone entity.³¹¹ The Commission also initiated a rulemaking to propose rules for fixed, point-to-point microwave service in the 37-38.6 GHz and 42.0-42.5 GHz frequency bands and to modify certain rules in the 38.6-40.0 GHz frequency band.³¹² Also in 2004, the Commission released the *Third Order on Reconsideration* rejecting a petition for reconsideration filed by Independent MultiFamily Communications Council of the 18 GHz *Second Order on Reconsideration*.³¹³ In that Order, the Commission altered the 18 GHz band plan by, among other things: (1) reallocating the 18.3-18.58 GHz band on a primary basis for fixed-satellite service ("FSS"), and (2) adopting provisions to ensure the orderly migration and timely reimbursement of terrestrial fixed service ("FS") incumbents in the 18.3-18.58 GHz band.³¹⁴ The Commission also released an *NPRM* seeking comment on a proposal to rechannelize the 17.7-19.7 GHz frequency band for

³⁰⁹ See Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services, *Report and Order*, 17 FCC Rcd 15040 (2002) (*Microwave Report and Order*).

³¹⁰ *Id.* at 15041 ¶ 1.

³¹¹ See Review of Quiet Zones Application Procedures, WT Docket No. 01-319, *Report and Order*, 19 FCC Rcd 3267 (2004).

³¹² See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz, ET Docket No. 95-183, *Third Notice of Proposed Rule Making*, 19 FCC Rcd 8232 (2004).

³¹³ See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, IB Docket 98-172, *Third Order on Reconsideration*, 19 FCC Rcd 10777 (2004).

³¹⁴ See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, IB Docket 98-172, *Second Order on Reconsideration*, 17 FCC Rcd 24248 (2002).

the purpose of encouraging efficient use of spectrum in that band.³¹⁵ Additional recent efforts are discussed under the relevant subpart, *infra*.

The 24 GHz auction (Auction No. 56) concluded on July 28, 2004, after three applicants placed winning bids on seven 24 GHz licenses.³¹⁶

Comments

No comments were received with respect to this rule part.

Recommendation

The Part 101 rules commented upon by parties in this proceeding concern licensing, technical, and operational rules, such as technical and operational standards and interference-related issues among Part 101 licensees as well as licensees in adjacent services. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that these Part 101 rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.”

In addition, after reviewing the comments submitted in this proceeding, staff finds that the Part 101 rules in their current form remain necessary in the public interest, and recommends that modification or repeal is not warranted. In light of the Part 101 rulemaking, in which the Commission conducted a thorough and substantial review of the Part 101 rules, staff does not recommend making any additional changes to the rules within the context of this Biennial Review.

³¹⁵ See *Rechannelization of the 17.7-19.7 GHz Frequency Band for Fixed Microwave Services under Part 101 of the Commission's Rules*, WT Docket No. 04-143, *Notice of Proposed Rulemaking*, 19 FCC Rcd 11658 (2004).

³¹⁶ “24 GHz Service Spectrum Auction Closes; Winning Bidders Announced,” *Public Notice*, DA 04-2429 (rel. Aug. 2, 2004).

PART 101, SUBPART G – 24 GHZ SERVICE AND DIGITAL ELECTRONIC MESSAGE SERVICE (DEMS)

Description

Part 101 contains licensing, technical, and operational rules for fixed operational microwave services that require operating facilities on land or in certain offshore coastal areas. Subpart G contains rules for the 24 GHz Service. The 24 GHz Service is now available for geographic licensing on either a common carrier or private basis.

Purpose

The purpose of Part 101 subpart G is to establish the rules for allocation and use of wireless services at 24 GHz, to ensure efficient spectrum use, and to prevent interference.

Analysis

Status of Competition

The majority of licenses are currently held by a single entity that emerged from bankruptcy (Chapter 11 reorganization) in late 2002. In 2004, a stock transaction was publicly announced that would transfer control of the dominant license holder.

Advantages

The current rules provide a clear regulatory framework for the development of competitive fixed wireless services. The existing technical and operational rules are necessary for administration of a radio service at 24 GHz. Through these rules, the Commission has recovered a portion of the value of the public spectrum for the benefit of the public.

Disadvantages

The Part 101 rules impose limited administrative and technical burdens inherent to the licensing process and necessary for compliance with technical and operational rules.

Recent Efforts

On July 28, 2004, the Commission completed the auction of 880 24 GHz Service licenses in the 24.25-24.45 GHz and 25.05-25.25 GHz bands (24 GHz band) ("Auction No. 56"), raising (in net bids) a total of \$216,050.³¹⁷ The long-form applications filed by the successful winning bidders are under review. On May 28, 2004, the Commission made

³¹⁷ See 24 GHz Service Spectrum Auction Closes, *Public Notice*, DA 04-2429 (rel. Aug. 2, 2004).

corrections to subpart G to eliminate confusion as to the service areas of 24 GHz licenses.³¹⁸

Comments

No comments were filed with respect to this subpart.

Recommendation

The Part 101, subpart G rules concern licensing, technical, and operational rules, such as technical and operational standards and interference-related issues among 24 GHz licensees as well as licensees in adjacent services. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that these Part 101 rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.”

Staff finds that the subpart G rules remain necessary in the public interest, and recommends that modification or repeal is not warranted.

³¹⁸ Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Erratum*, 19 FCC Rcd 9846 (WTB BD 2004).

PART 101, SUBPARTS L AND M – LOCAL MULTIPOINT DISTRIBUTION SERVICE (LMDS) AND COMPETITIVE BIDDING PROCEDURES

Description

Part 101 contains licensing, technical, and operational rules for the fixed microwave radio services. Local Multipoint Distribution Service (LMDS) systems are fixed point-to-point or point-to-multipoint radio systems that consist of hub and subscriber stations.³¹⁹ LMDS licensees may provide a variety of services, including high-speed data and Internet services and multi-channel video programming distribution.³²⁰

Subpart L contains licensing, technical, and operational rules for LMDS. In general, the rules in this part: (1) provide eligibility restrictions in this service; (2) define the service areas of LMDS licenses; (3) specify the permissible operations for authorized systems; (3) specify the frequencies available to LMDS licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for LMDS licensees; and (6) define system operations and permissible communication services.

Subpart M contains competitive bidding rules and procedures for commercial licenses in LMDS. In particular, the rules, on a service-specific basis: (1) provide competitive bidding mechanisms and design options; (2) establish application, disclosure, and certification procedures for short- and long-form applications; (3) specify down payment, unjust enrichment, withdrawal, and default mechanisms; (4) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (5) provide eligibility and technical requirements for partitioning and disaggregation.

Purpose

The purpose of the Part 101 rules is to establish rules for assignment of spectrum for private operational, common carrier, and LMDS fixed microwave operations that require operating facilities on land or in specified offshore coastal areas. Subpart L contains the basic licensing and operational rules for LMDS. Subpart M helps to ensure access to new telecommunications offerings by ensuring that all customer segments are served, that there is not an excessive concentration of licenses, and that small businesses, rural telephone companies, and businesses owned by women and minorities will have genuine opportunities to participate in the provision of service.

³¹⁹ 47 C.F.R. Part 101.

³²⁰ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Sixth Notice of Proposed Rulemaking*, 14 FCC Rcd 21520, 21532 ¶ 32 (1999).

Analysis

Status of Competition

The initial LMDS operator no longer provides multi-channel video programming distribution services and has announced plans to offer high-speed data access on a portion of its original spectrum. The remaining licenses were issued following auctions held in March 1998 and April and May 1999. LMDS equipment is still subject to limited availability, and the majority of licensees are still developing their systems.³²¹ LMDS will most likely compete with wireless and wireline broadband service providers targeting small and medium-sized businesses.³²²

Advantages

The subpart L rules provide licensees with broad flexibility to identify and implement services in response to market demand. The Commission recently allowed LMDS eligibility restrictions for incumbent local exchange carrier and cable companies to sunset;³²³ this development should provide access to additional capital to develop LMDS fully, make administration of LMDS consistent with other competitive services, and aid the development of LMDS in rural markets.³²⁴

The subpart M competitive bidding rules, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules of subpart M were structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum, thereby fostering economic growth. In contrast to other licensing mechanisms such as lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum for the benefit of the public.

Disadvantages

The subpart L rules impose administrative burdens inherent to the licensing process and necessary for compliance with technical and operational rules.

³²¹ See generally Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Report and Order and Memorandum Opinion and Order*, 15 FCC Red 11857, 11875 App. B (comprehensive list of LMDS launches and the types of service each carrier is providing) (*LMDS Third Report and Order*).

³²² See *id.*

³²³ *Id.*

³²⁴ *Id.* at 11871 ¶ 33.

The auction rules in subpart M impose certain transaction costs on auction participants (aside from the obligation on the winning bidder to pay the amount bid). These auction-related costs may be somewhat higher than the cost of filing a lottery application but significantly less than the cost of a comparative hearing.³²⁵ In addition, certain aspects of the auctions process (e.g., setting of minimum opening bid amounts, bid increments, and bidding credit levels) still require service-specific notice and comment prior to each individual auction.

Recent Efforts

The June 23, 2000, *LMDS Third R&O* allowed the cross-ownership restriction to expire on June 30, 2000. The decision to allow the cross-ownership rule to sunset was based on a thorough analysis of competitive issues and the LMDS market.

The Commission recently completed a comprehensive re-evaluation of the Part 101 rules including changes to the LMDS technical rules.³²⁶

Comments

No comments were filed with respect to this subpart.

Recommendation

The Part 101, subpart L rules concern licensing, technical, and operational rules, such as technical and operational standards and interference-related issues among LMDS licensees as well as licensees in adjacent services. In addition, the Part 101, subpart M rules contain competitive bidding procedures for the LMDS service. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that these Part 101 rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.”

In addition, staff finds that the Part 101 rules in subparts L and M remain necessary in the public interest, and recommends that modification or repeal is not warranted.

³²⁵ See FCC Report to Congress on Spectrum Auctions, WT Docket No. 97-150, *Report*, FCC 97-353, Section III, p. 8 (rel. October 9, 1997) (citing studies estimating costs of \$800 per application under the lottery system and \$130,000 per application under the comparative hearing process).

³²⁶ See *Microwave Report and Order*, note 309, *supra*.

PART 101, SUBPART O – MULTIPLE ADDRESS SYSTEMS (MAS)

Description

Part 101 contains licensing, technical, and operational rules for the fixed microwave radio services.³²⁷ Multiple Address Systems (MAS) consist of 3.2 MHz of spectrum for fixed point-to-point or point-to-multipoint radio systems located in the 900 MHz band and have been primarily used by the power, petroleum, and security industries for various alarm, control, interrogation, and status reporting requirements, and by the paging industry for control of multiple paging transmitters in the same general geographic area.

Subpart O also contains licensing, technical, and operational rules for MAS. In general, the rules in this part: (1) provide eligibility restrictions in this service; (2) define the service area of MAS licenses; (3) specify the permissible operations for authorized systems; (4) specify the frequencies available to MAS licensees; (5) establish license terms; (6) establish the minimum construction or coverage requirements for MAS licensees; and (7) define system operations and permissible communication services.

MAS uses competitive bidding rules and procedures set forth in Part 1, subpart Q.

Purpose

The purpose of the Part 101 rules is to establish rules for assignment of spectrum for private internal services that require operating facilities on land or in specified offshore coastal areas.

Analysis

Status of Competition

Competition in the MAS market has been slow to develop. In November 2001, the Commission held Auction No. 42, which offered 5104 licenses for sale in the 932/941 MHz and 928/959 MHz MAS bands. Bidders only purchased 878 of the available licenses.

Advantages

The subpart O rules provide licensees with broad flexibility to identify and implement services in response to market demand. Use of competitive bidding rules, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to other licensing mechanisms such as lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these

³²⁷ 47 C.F.R. Part 101.

rules, the Commission has recovered a portion of the value of the public spectrum for the benefit of the public.

Disadvantages

The MAS licensing rules impose administrative burdens inherent to the licensing process and necessary for compliance with technical and operational rules.

The auction rules in this subpart impose certain transaction costs on auction participants (aside from the obligation on the winning bidder to pay the amount bid). These auction-related costs may be somewhat higher than the cost of filing a lottery application but significantly less than the cost of a comparative hearing.³²⁸ In addition, certain aspects of the auctions process (e.g., setting of minimum opening bid amounts, bid increments, and bidding credit levels) still require service-specific notice and comment prior to each individual auction.

Recent Efforts

The Commission recently completed a comprehensive re-evaluation of the Part 101 rules.³²⁹ In the *Competitive Bidding Conforming Edits Order*, the Wireless Telecommunications Bureau modified or eliminated certain rules pertaining to competitive bidding in the MAS service to conform with the general competitive bidding rules set forth in Part 1 of the Commission's rules.³³⁰

Comments

No comments were filed with respect to this subpart.

Recommendation

The Part 101, subpart O rules concern licensing, technical, and operational rules, such as technical and operational standards and interference-related issues among MAS licensees as well as licensees in adjacent services. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that these Part 101 rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

³²⁸ See *FCC Report to Congress on Spectrum Auctions*, WT Docket No. 97-150, *Report*, FCC 97-353, Section III, pg. 8 (rel. October 9, 1997) (citing studies estimating costs of \$800 per application under the lottery system and \$130,000 per application under the comparative hearing process).

³²⁹ See *Microwave Report and Order*, note 309, *supra*.

³³⁰ Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100 and 101 of Commission Rules -- *Competitive Bidding, Order*, 17 FCC Rcd 6534 (2002); *Erratum*, 17 FCC Rcd 11146 (2002) (*Competitive Bidding Conforming Edits Order*) (modifying or eliminating sections 101.1317 and 101.1319).

In addition, staff finds that the rules in subpart O remain necessary in the public interest, and recommends that modification or repeal is not warranted.

PART 101, SUBPART P – MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE RULES FOR THE 12.2-12.7 GHZ BAND

Description

Part 101 contains licensing, technical, and operational rules for the fixed microwave radio services.³³¹ Multichannel Video Distribution and Data Service (MVDDS) is a fixed microwave service licensed in the 12.2-12.7 GHz band that provides various wireless services, excluding mobile and aeronautical operations.

Subpart P also contains licensing, technical, and operational rules for MVDDS.³³² In general, the rules in this part: (1) define the service area of MVDDS licenses; (2) specify the broadcast carriage and retransmission requirements for certain licensees; (3) specify the amount of available spectrum to MVDDS licensees; (4) define available spectrum band and establish permissible terms of operation; (5) establish terms for the treatment of incumbents; (6) define system operations and permissible communication services; (7) define regulatory status and eligibility; (8) establish MVDDS eligibility restrictions for cable operators; and (9) establish other license terms, usage rules and protection rules.

Purpose

The Part 101 rules are intended to reduce or eliminate the differences in application processing between common carriers and private operational fixed microwave service licensees, and to further the regulatory parity among these microwave services. Subpart P establishes terms of operation for MVDDS licensed services in the 12.2-12.7 GHz band.

Analysis

Status of Competition

In establishing MVDDS, the Commission concluded that a fourth provider in the MVPD marketplace would provide significant public interest benefits through lower prices, improved service quality, increased innovation, and increased service to unserved or underserved rural areas.³³³ On January 27, 2004, the Commission completed the auction of the 214 MVDDS licenses ("Auction No. 53"), raising (in net bids) a total of

³³¹ 47 C.F.R., Part 101.

³³² 47 C.F.R. §§ 101.1401-101.1440.

³³³ Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9680 (2002) (*MVDDS Second R&O*).

\$118,721,835. In this auction, ten winning bidders won a total of 192 MVDDS licenses, which the Commission issued later in 2004.³³⁴ As of the third quarter 2004, MVDDS equipment is still under development.

Advantages

The subpart P rules provide licensees with broad flexibility to identify and implement services in response to market demand, subject to interference rules to protect co-band satellite and other licensees. Use of competitive bidding rules, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to other licensing mechanisms such as lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum for the benefit of the public.

Disadvantages

The MVDDS licensing rules impose administrative burdens inherent to the licensing process and necessary for compliance with technical and operational rules.

Recent Efforts

In 2002 the Commission established the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2-12.7 GHz band (12 GHz band).³³⁵ In 2003, the Commission adopted revisions to the service rules for licensing the Multichannel Video Data & Distribution Service (MVDDS) in response to several petitions.³³⁶ The Commission also revised and improved the service areas for licensing Multichannel Video Data & Distribution Service (MVDDS).³³⁷

³³⁴ See Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses, *Public Notice*, DA 04-2331 (rel. July 27, 2004) (granting 154 licenses); Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses to South.Com LLC, DA 04-2547, *Public Notice*, (rel. Aug. 18, 2004) (granting 37 licenses); and DTV Norwich, LLC, Application for Multichannel Video Distribution and Data Service License, MVD001-New York; Request for Waiver of Section 101.1412(g)(4) of the Commission's Rules, *Order*, DA 04-3044 (rel. Sept. 23, 2004) (granting one license).

³³⁵ *MVDDS Second R&O*, 17 FCC Rcd at 9680.

³³⁶ See Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in Ku-Band Frequency Range, ET Docket No. 98-206, *Fourth Memorandum Opinion and Order*, 18 FCC Rcd 8428 (2003) (*appeal pending*).

³³⁷ See Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in Ku-Band Frequency Range, ET Docket No. 98-206, *Third Report and Order*, 18 FCC Rcd 13468 (2003). See also *Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 7589 (2003).

On January 27, 2004, the Commission completed the auction of the 214 MVDDS licenses ("Auction No. 53"), raising (in net bids) a total of \$118,721,835. In this auction, ten winning bidders won a total of 192 MVDDS licenses, which the Commission issued later in 2004.³³⁸

Comments

No comments were filed with respect to this subpart.

Recommendation

Section 101.1412 establishes cross-ownership restrictions between cable operators and MVDDS. The Commission adopted this MVDDS eligibility restriction in ET Docket No. 98-206, a proceeding terminated in 2003, after finding that open eligibility for in-region cable operators would pose a significant likelihood of substantial competitive harm.³³⁹ The Commission began licensing this new service in mid-2004 and as of the third quarter 2004, MVDDS equipment was still under development. As such, we do not find that this rule is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

The other Part 101, subpart P rules concern licensing, technical, and operational rules, such as technical and operational standards and interference-related issues among MVDDS and other co-band licensees as well as licensees in adjacent services. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly, we do not find that these Part 101 rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

The staff also finds that the rules in subpart P in their current form remain necessary in the public interest, and recommends that modification or repeal is not warranted.

³³⁸ See note 334, *supra*.

³³⁹ MVDDS *Second R&O*, 17 FCC Rcd at 9679-80 ¶ 164.

PART 101, SUBPART Q – SERVICE AND TECHNICAL RULES FOR THE 70/80/90 GHZ BANDS

Description

Part 101 contains licensing, technical, and operational rules for the fixed microwave radio services.³⁴⁰ Subpart Q also contains licensing, technical, and operational rules for the 70/80/90 GHz bands.

The 70/80/90 GHz bands are licensed to promote the private sector development and use of the "millimeter wave" spectrum in the 71-76 GHz, 81-86 GHz and 92-95 GHz bands. In general, the rules in this part provide a flexible and innovative regulatory framework for the 70/80/90 GHz bands that do not require traditional "Part 101" frequency coordination among non-Federal Government users. Under this approach, the Commission will issue an unlimited number of non-exclusive nationwide licenses to non-Federal Government entities for the 12.9 gigahertz of spectrum allocated for commercial use. These licenses serve as a prerequisite for registering individual point-to-point links. The 70/80/90 GHz bands are allocated on a shared basis with Federal Government users. Therefore, a licensee will not be authorized to operate a link under its nationwide license until the link is both (1) coordinated with the National Telecommunications and Information Administration (NTIA) with respect to Federal Government operations and (2) registered as an approved link with the Commission (interim process) or third-party Database Manager (permanent process).

Purpose

The Part 101 rules are intended to reduce or eliminate the differences in application processing between common carriers and private operational fixed microwave service licensees, and to further the regulatory parity among these microwave services. Subpart Q establishes terms of operation for services in the 70/80/90 GHz band.

Analysis

Status of Competition

Because the rules in Part 101, Subpart Q, became effective only in the 2003-2004 period, it is too early to assess status of competition with respect to this subpart.

Advantages

The subpart Q rules: (1) provide a flexible and streamlined regulatory framework designed to encourage innovative uses of the spectrum; (2) accommodate potential future developments in technology and equipment; (3) promote competition in the communications services, equipment and related markets; and (4) advance potential spectrum sharing between non-Federal Government and Federal Government systems. In

³⁴⁰ 47 C.F.R. Part 101.

addition, these rules encourage the use of technologies developed by our military and scientific community in a broad range of new products and services, such as high-speed wireless local area networks, and increase access to broadband services, including access systems for the Internet.

Disadvantages

Subpart Q imposes some administrative burdens inherent to the licensing process and necessary for compliance with technical and operational rules.

Recent Efforts

On October 16, 2003, the Commission adopted a *Report and Order* establishing service rules to promote non-Federal Government development and use of the “millimeter wave” spectrum in the 71-76 GHz, 81-86 GHz and 92-95 GHz bands³⁴¹ on a shared basis with Federal Government operations.³⁴²

On May 26, 2004, the Wireless Telecommunications Bureau released a public notice establishing a new licensing and interim link registration program for licenses in the 71-76 GHz, 81-86 GHz, and 92-95 GHz bands.³⁴³

On September 29, 2004, the Commission designated three private entities as database managers that will be tasked with jointly developing and managing databases of link registrations by FCC licensees.³⁴⁴

Comments

No comments were filed with respect to this subpart.

Recommendation

The Part 101, subpart Q rules concern licensing, technical, and operational rules in the 70/80/90 GHz bands. As such, the need and purposes for these rules are not directly affected by competitive developments that guide our Section 11 analysis. Accordingly,

³⁴¹ See Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands, WT Docket No. 02-146, *Report and Order*, 18 FCC Rcd 23318 (2003) (*Report and Order*) (*recon. pending*). On February 23, 2004, The Wireless Communications Association International, Inc. filed a petition for reconsideration of certain aspects of the *Report and Order*.

³⁴² *Id.* at 23319 n.3.

³⁴³ See Wireless Telecommunications Bureau Announces Licensing and Interim Link Registration Process, Including Start Date for Filing Applications for Non-exclusive Nationwide Licenses in the 71-76 GHz, 81-86GHz, and 92-95GHz Bands, *Public Notice*, 19 FCC Rcd 9439 (2004).

³⁴⁴ See Allocation and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands, WT Docket No. 02-146, *Order*, DA 04-3151 (rel. Sept. 29, 2004). See also Wireless Telecommunications Bureau Opens Filing Window for Proposals to Develop and Manage Independent Database of Site Registrations by Licensees in the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands, *Public Notice*, 19 FCC Rcd 4597 (WTB BD 2004).

we do not find that these Part 101 rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.”

In addition, staff finds that the rules in subpart Q remain necessary in the public interest, and recommends that modification or repeal is not warranted.